

## UNITED STATES DISTRICT COURT

District of \_\_\_\_\_

UNITED STATES OF AMERICA  
V.

BAY STATE GAS COMPANY

**JUDGMENT IN A CRIMINAL CASE**  
(For Organizational Defendants)

CASE NUMBER: 1:20-CR-10066-FDS

Alejandro N. Mayorkas

Defendant Organization's Attorney

**THE DEFENDANT ORGANIZATION:**

- ☒ pleaded guilty to count(s) I
- ☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.
- ☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The organizational defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
49:60123(a), 49:60118(a), 49 C.F.R. Sec. 192.605(a), 192.605(b)(5)	Failure to prepare and follow a procedure for the starting up and shutting down of a pipeline designed to assure operation within the maximum allowable operating pressure	9/13/2018	I

The defendant organization is sentenced as provided in pages 2 through 5 of this judgment.

- ☐ The defendant organization has been found not guilty on count(s) \_\_\_\_\_
- ☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant organization must notify the United States attorney for this district within 30 days of any change of name, principal business address, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant organization must notify the court and United States attorney of material changes in economic circumstances.

Defendant Organization's  
Federal Employer I.D. No.: 04-3442797

Defendant Organization's Principal Business Address:

4 Technology Drive  
Westborough MA 015816/23/2020

Date of Imposition of Judgment

/s/ F. Dennis Saylor IV

Signature of Judge

Honorable F. Dennis Saylor IV, Chief, U.S.D.C.

Name of Judge

Title of Judge

6/24/2020

Date

Defendant Organization's Mailing Address:

4 Technology Drive  
Westborough MA 01581

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**PROBATION**

The defendant organization is hereby sentenced to probation for a term of : 3 years

The defendant organization shall not commit another federal, state or local crime.

If this judgment imposes a fine or a restitution obligation, it is a condition of probation that the defendant organization pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant organization must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page (if indicated below).

A period of probation of three (3) years that will be terminated by the Court prior to the three (3) year term upon a certification to the Court of the completion of the sale of Defendant or Defendant's gas distribution business to a qualified third-party buyer consistent with the requirements of M.G.L. c. 164, § 96 and Interlocutory Order on Standard of Review, D.P.U. 10-170, and formal acceptance of the sale by the Massachusetts Department of Public Utilities ("MA DPU") ("the Final Sale Certification"). Subject to the Court's approval of the form of the Final Sale Certification, the Court will terminate the Defendant's sentence of probation upon the Court's receipt of the Final Sale Certification. However, in the event that the Final Sale Certification is received by the Court prior to the one (1) year mandatory period of probation under 18 U.S.C. § 3561, Defendant's probation will continue for the remainder of the one (1) year period but subject to only the mandatory conditions of probation set forth in USSG § 8D1.3 and 18 U.S.C. § 3563(a), and not the additional conditions of probation specified in paragraph 5(c) since Defendant will no longer be the legal owner of its previous gas distribution business or assets. Under the latter scenario, the parties will file, and the Court will approve, the request for termination of probation at the end of the one-year mandatory period.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) within thirty days from the date of this judgment, the defendant organization shall designate an official of the organization to act as the organizations's representative and to be the primary contact with the probation officer;
- 2) the defendant organization shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 3) the defendant organization shall notify the probation officer ten days prior to any change in principal business or mailing address;
- 4) the defendant organization shall permit a probation officer to visit the organization at any of its operating business sites;
- 5) the defendant organization shall notify the probation officer within seventy-two hours of any criminal prosecution, major civil litigation, or administrative proceeding against the organization;
- 6) the defendant organization shall not dissolve, change its name, or change the name under which it does business unless this judgment and all criminal monetary penalties imposed by this court are either fully satisfied or are equally enforceable against the defendant's successors or assignees; and
- 7) the defendant organization shall not waste, nor without permission of the probation officer, sell, assign, or transfer its assets.

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**ADDITIONAL PROBATION TERMS**

1. Defendant will implement and adhere to each of the recommendations from the National Transportation Safety Board ("NTSB") related to NTSB Accident ID PLD 18MR003 regarding the Merrimack Valley Over-Pressurization Event on or about September 13, 2018 (the "Event").
2. Defendant will agree to employ at Defendant's expense an in-house monitor to oversee Defendant's compliance with the recommendations of the NTSB and applicable laws and regulations. This monitor will report monthly in writing to a government committee composed of a representative from the U.S. Attorney, the MA DPU and the Massachusetts Attorney General's Office ("MA AGO").
3. In the event that Defendant enters into a definitive purchase and sale agreement for the sale of Defendant or its gas distribution business within the three (3) year term of probation, Defendant will do the following:
  - (A) Within three (3) business days of the execution of a definitive purchase and sale agreement with a purchaser of Defendant or Defendant's gas distribution business, Defendant will submit to the U.S. Attorney and the Court a filing, which if appropriate may be filed under seal, that completely and accurately details the terms of the purchase and sale agreement including the proposed purchase price;
  - (B) Within fourteen (14) business days of the execution of a definitive purchase and sale agreement with a purchaser of Defendant or Defendant's gas distribution business, Defendant will provide the U.S. Attorney and the Court, in the form of a declaration under 28 U.S.C. § 1746 that may be filed under seal if appropriate, a true and accurate detailed accounting following both Generally Accepted Accounting Principles ("GAAP") and federal income tax obligations, of the total amount of any potential gain, profit or loss that will result from the proposed sale reflected in the filing described above in paragraph 5(c)(iii)(A) and in accordance with the formula set forth in Exhibit B to the Plea Agreement;
  - (C) Upon request from the U.S. Attorney, Defendant will promptly provide to the U.S. Attorney true and accurate records including income tax returns, to the extent required to verify the accuracy of any potential profit, gain or loss that will result from the sale of Defendant or Defendant's gas distribution business reflected in the filing described above in paragraph 5(c)(iii)(A). Defendant understands and agrees that the U.S. Attorney may provide these records to an outside consultant/expert he retains to verify the accuracy of the information, provided that such consultant/expert is subject to the terms of a confidentiality agreement; and
  - (D) No later than three (3) business days before the completion of any sale of Defendant or its gas distribution business, Defendant will provide the U.S. Attorney and the Court, in a filing that may be submitted under seal if appropriate, any updated information about the terms of sale, and Defendant's calculation of any gain, profit or loss from the sale of Defendant or Defendant's gas distribution business in accordance with the formula set forth in Exhibit B. Defendant understands and agrees that Defendant must completely and accurately report to both the Court and the U.S. Attorney the total amount of any profit, gain or loss from the sale of Defendant or its gas distribution business.

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**CRIMINAL MONETARY PENALTIES**

The defendant organization must pay the following total criminal monetary penalties under the schedule of payments on Sheet 4.

	<u><b>Assessment</b></u>	<u><b>Fine</b></u>	<u><b>Restitution</b></u>
<b>TOTALS</b>	\$ 400.00	\$ 53,030,116.00	\$ 0

- ☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- ☐ The defendant organization shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant organization makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u><b>Name of Payee</b></u>	<u><b>Total Loss*</b></u>	<u><b>Restitution Ordered</b></u>	<u><b>Priority or Percentage</b></u>
<b>TOTALS</b>	\$ <u>0.00</u>	\$ <u>0.00</u>	

- ☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- ☐ The defendant organization shall pay interest on restitution or a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 4 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant organization does not have the ability to pay interest, and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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**SCHEDULE OF PAYMENTS**

Having assessed the organization's ability to pay, payment of the total criminal monetary penalties are due as follows:

**A** ☒ Lump sum payment of \$ 400.00 due immediately, balance due☐ not later than \_\_\_\_\_, or☐ in accordance with ☐ C or ☐ D below; or**B** ☐ Payment to begin immediately (may be combined with ☐ C or ☐ D below); or**C** ☐ Payment in \_\_\_\_\_ (e.g., equal, weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or**D** ☒ Special instructions regarding the payment of criminal monetary penalties:

Criminal fine in the amount of \$53,030,116.00 shall be paid by July 23, 2020.

All criminal monetary penalties are made to the clerk of the court.

The defendant organization shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant organization shall pay the cost of prosecution.☐ The defendant organization shall pay the following court cost(s):☐ The defendant organization shall forfeit the defendant organization's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.